

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN E. FELGAR, :  
PETITIONER, :

V. :

Civil Action No. 04-196 E

PA. BD. OF Prob. & PAROLE, ET AL., :  
RESPONDENT :

PETITIONERS CROSS REPLY TO  
RESPONDENTS SUPPLEMENTAL ANSWER

AND NOW COMES, JOHN E. FELGAR, PETITIONER, AND  
SUBMITS THE FOLLOWING IN REPLY TO RESPONDENTS SUPPLE-  
-MENTAL ANSWER TO THE PETITIONERS MOTION FOR PRELIMINARY  
INJUNCTION WHICH WAS DENIED ON, SEPTEMBER 23, 2005,  
IN A TELEPHONE HEARING IN REFERENCE TO THE PETITION FOR  
WRIT OF HABEAS CORPUS IN THE ABOVE CAPTIONED CASE:

1. PETITIONER DENIES THAT AFTER TWO RECENT HEARINGS HELD,  
ON SEPTEMBER 16<sup>TH</sup>, 2005 AND SEPTEMBER 23, 2005, CONDUCTED BY  
THIS HONORABLE COURT, CONCERNING THE RECENT FILING BY THE  
PETITIONER FOR A PRELIMINARY INJUNCTION, THAT THE REAL  
ISSUE CONCERNING THE PETITIONERS SENTENCE HAS JUST

(1)

NOW BECOME CLEAR ENOUGH TO BE ANALYZED BY THE RESPONDENT. PETITIONER AVERS AND IT IS BELIEVED THAT THE REAL ISSUE CONCERNING THE PETITIONER'S SENTENCE WAS PRESENTED TO THE RESPONDENT, ON 9-9-2004, IN WHICH THE RESPONDENT ANSWERED, ON ~~10-29-04~~, BY CONCEALING EVIDENCE AND ACTING IN MALFEASANCE UNDER COLOR OF LAW. AND NOW AT THE CONCLUSION OF THE HEARING ON, SEPTEMBER 23, 2005, ON THE MOTION FOR PRELIMINARY INJUNCTION IT WAS ADMITTED BY THE RESPONDENT THAT THE PETITIONER IS CURRENTLY SERVING A SUSPENDED SENTENCE IN THE STATE CORRECTIONAL INSTITUTION PURSUANT TO THE CORRECTED WRITTEN SENTENCE ORDER OF, AUGUST 26, 2002. THE REAL ISSUE HERE IS NOT THE FURTHER ANALIZATION OF THE PETITIONER'S SENTENCE, BUT, THE NEGLIGENCE AND FRAUD COMMITTED BY OFFICIALS AGAINST THE PETITIONER, THE UNLAWFUL COMMITMENT, & UNLAWFUL CONFINEMENT AND THE VIOLATIONS OF THE PETITIONER'S (5<sup>th</sup>) FIFTH AND (14<sup>th</sup>) FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION THAT THE PETITIONER CONTINUES TO SUFFER FROM.

2. Mr. Mericli's presumption that the Judge of the JEFFERSON COUNTY COURT OF COMMON PLEAS HAD CORRECTED AN ERROR BY ORDER, ON AUGUST 26, 2002, BUT, "UNINTENTIONALLY AND ACCIDENTALLY

ERASED" OR SUSPENDED THE SENTENCE OF SIX(6) TO TWENTY-FOUR(24) MONTHS IS PREPOSTEROUS AND IS JUST ANOTHER ATTEMPT BY MR. MERICLI TO CREATE A RED-HERRING AND BOILER PLATE ISSUE.

3. The problem with Mr. Mericli's assumption is that he DOES NOT RESPECT NOR UNDERSTAND THE LAW WHEN INTERPRETING THE CLEARLY PLAIN LANGUAGE WITH-IN WRITTEN SENTENCING ORDERS NOR THE CORRECTIONS OF ILLEGAL WRITTEN SENTENCE ORDERS AND FURTHERMORE PLEA AGREEMENTS, IE, CONTRACTS THAT ARE MADE VOID WHEN THE PROVISIONS ARE MISINTERPRETED OR AMENDED OUTSIDE THE KNOWLEDGE OR PRESENCE OF THE CONTRACTEE. Surely Judge Foradora's ORDER OF, AUGUST 26, 2002, (TO CORRECT THE WRITTEN SENTENCE ORDER OF, AUGUST 22, 2002), WAS NOT A SECOND ERROR. IT ONLY MAKES SENSE THAT AFTER AN ILLEGAL SENTENCE ORDER WAS DRAFTED AND SIGNED BY THE PRESIDENT JUDGE OF JEFFERSON COUNTY THAT A CORRECTED AND REDUCED SENTENCE WOULD BE APPROPRIATE. WHY WOULD THE JUDGE IMPOSE A PRISON SENTENCE FOR AN(M2) A LESSER OFFENSE OF SIMPLE ASSAULT, AND THEN IMPOSE A PROBATION TERM FOR AN (M1) OFFENSE OF TERRORISTIC THREATS, A GREATER OFFENSE. THIS DOES NOT MAKE SENSE. ALL THE JUDGE DID AWAY WITH WAS THE

LABLES OF THE WRITTEN SENTENCE ORDER WHICH WAS SIMPLE ASSAULT AND MADE THE TITLES AND/OR LABLES TERRORISTIC THREATS WITH SIMPLE ASSAULT RUNNING CONCURRENT WITH THE FIVE (5) YEAR PROBATIONARY TERM.

AGAIN THE RESPONDENT IS TRYING TO GUESS AND MAKE SENSE OUT OF A CLEARLY UNAMBIGUOUS AMENDED SENTENCE ORDER. THE JUDGE DID NOT MAKE ANOTHER CLERICAL ERROR.

WHAT DOES MAKE SENSE IS THE RESPONDENTS AND OFFICIALS ATTEMPTING TO COVER UP AND VINDICATE THEMSELVES OF ANY WRONGFUL DOING CONCERNING THE PETITIONER'S UNLAWFUL COMMITMENT AND FURTHER CONFINEMENT AT THE STATE CORRECTIONAL INSTITUTION. THE PETITIONER DOES NOT SEEK TO PROFIT FROM THE UNDO PUNISHMENT WHICH HE HAS SUFFERED FROM, BUT, DOES EXPECT TO BE COMPENSATED AND SEEK JUSTICE FOR THE ILLEGAL ACTS CAUSED BY OFFICIALS. AS FOR MR. MERICLI'S UNPROFESSIONAL COMMENTS REFERRING TO "RECOVERY OF FUMBLES AND FOOTBALL", THE CORRECT ANALOGY IS "FOULS SHOULD BE PENALIZED FOR BREACH OF THE RULES".

4. PETITIONER AVERS THAT JUDGE FORADORA WAS CONVIENIENTLY ON VACATION AND WAS NOT PRESENT AT THE PETITIONER'S POST CONVICTION RELIEF HEARING OF, AUGUST 8, 2003, WHERE SENIOR PRESIDENT JUDGE HENRY PRESIDED IN JUDGE FORADORA'S PLACE. JUDGE FORADORA'S DECISION TO

NOT BE PRESENT is obvious. PETITIONER did invoke the STATE COURT FIRST AND did address the issue of the AMENDED WRITTEN SENTENCE ORDER at the POST CONVICTION HEARING OF, AUGUST 8, 2003, but, the PETITIONER'S public DEFENDER, JOHN ENGROS, quickly interrupted the PETITIONER AND GAVE AN INADEQUATE EXPLANATION to the COURT. SEE: P.C.R.A. TRANSCRIPTS pg's 20-23 ATTACHED AS APPENDIX(A). THE PETITIONER WAS JUST AS CONFUSED CONCERNING THE AMENDED ORDER AT THE TIME AS JUDGE HENRY WOULD HAVE BEEN IF HE WOULD HAVE BEEN GIVEN THE CHANCE TO REVIEW THE ORDER. PETITIONER'S ATTORNEY, JOHN ENGROS, OF THE JEFFERSON COUNTY PUBLIC DEFENDER'S OFFICE INTENTIONALLY EXPLOITED his public OFFICE position by siding with the COMMONWEALTH to MISLEAD THE COURT AND THIS PETITIONER CONCERNING THE AMENDED WRITTEN SENTENCE ORDER OF, AUGUST 26, 2002, IN AN EFFORT TO COVER UP AND/OR CONCEAL THE FACT THAT THE PETITIONER WAS UNLAWFULLY COMMITTED AND ILLEGALLY CONFINED IN A STATE CORRECTIONAL INSTITUTION. THE PETITIONER'S LIMITED KNOWLEDGE OF THE LAW AT THE TIME OF THE P.C.R.A. HEARING WAS TAKEN ADVANTAGE OF by OFFICIALS AND had procedurally defaulted the issues of the PETITIONER'S CONSTITUTIONAL rights that had BEEN VIOLATED CONCERNING THE UNLAWFUL COMMITMENT OF THE PETITIONER. AS THE PETITIONER REFERRED to by telephonic

COMMUNICATION AT THE HEARINGS FOR PRELIMINARY INJUNCTION ON, SEPTEMBER 15, 2005, AND SEPTEMBER 23, 2005, POWERS OF SENTENCING COURT TO "CORRECT ERRORS" REGARDING SENTENCE IS BOUNDED BY CONSIDERATIONS OF TIMELINESS ON PART OF PART OF TRIAL COURT AND ON THE PART OF THE AGGRIEVED PARTY; SEE: COM. V. QUINLAN, 639 A.2d 1239, 1240, 1241 (PA. SUPER 1994); ALSO, RULES REQUIRING TIMELY MODIFICATION OF SENTENCE CONTROLLED WHERE SENTENCE, AS ORIGINALLY WRITTEN, SIGNED AND RECORDED, WAS NOT CHALLENGED AS ILLEGAL, PATENTLY CONTRADICTORY, OR FRAUDULENTLY PROCURED, 42 PA. C.S.A. § 5505; RULES CRIM. PROC., RULE 1410, 42 PA. C.S.A.; RULES APP. PROC., RULE 1701, 42 PA. C.S.A.; ALSO, COMMONWEALTH MAY PURSUE A CORRECTION, MODIFICATION OR INCREASE IN ORIGINALLY IMPOSED SENTENCE AS NO SENTENCE IS FINAL UNTIL RIGHT OF APPELATE REVIEW HAS BEEN EXHAUSTED OR WAIVED; HOWEVER, RULE WHICH PROVIDES THAT MOTION TO MODIFY SENTENCES MUST BE FILED WITH SENTENCING COURT PRIOR TO OBTAINING APPELATE REVIEW OF SENTENCE APPLIES TO THE COMMONWEALTH, AND FAILURE TO COMPLY WITH RULE CONSTITUTES WAIVER OF RIGHT TO APPELATE REVIEW. RULES CRIM. PROC., RULE 1410, 42 PA. C.S.A.. COM. V. MARTIN, SUPRA (TRIAL COURT LACKED JURISDICTION TO MODIFY A SENTENCE, ONCE THE THIRTY-DAY PERIOD FOR FILING AN APPEAL HAS PASSED.

5. The petitioner did in fact exhaust his remedies at the post conviction relief hearing and is permitted to seek a writ of federal habeas corpus under 28 U.S.C. SECTION 2241(c) AND 28 U.S.C. SECTION 2254(b); SEE: WENGER V. FRANK, 266 F.3d 218, 220, 224-225 (2000); ALSO, PETITIONER'S MEMORANDUM IN SUPPORT OF PETITIONER'S ANSWER TO RESPONDENT'S ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS, PAR. NO. #8-11, PG. 9-16, DATED, NOVEMBER 11, 2004.

6. Unlike FAULKNER, the petitioner complains that he was unlawfully committed NOT illegally detained

7. It is admitted that the petitioner had in fact originally filed a writ of habeas corpus ad subjiciendum in the COURT OF COMMON PLEAS OF JEFFERSON COUNTY CHALLENGING THE AMENDED SENTENCE ORDER OF AUGUST 26, 2002, WHERE THE COURT CONSTRUED THE WRIT AS A PETITION FOR POST CONVICTION RELIEF. SEE: APPENDIX(A) PG. 23.



8. PETITIONER AVERES THAT STATE COURT PRECEEDINGS WERE INEFFECTIVE. ALSO, UNDER THE ANTI TERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 WHICH REVISED THE PROCEDURES FOR HABEAS CORPUS PROCEEDINGS. 104(1) OF THE ACT STATES THAT APPLICATIONS BY PERSONS IN STATE CUSTODY "SHALL NOT BE GRANTED UNLESS IT APPEARS THAT.... THE APPLICANT HAS NO AVAILABLE STATE REMEDY OR THAT PROCESS WOULD BE INEFFECTIVE." PETITIONER AVERES THAT EXHAUSTION OF STATE COURT REMEDIES SHOULD BE EXCUSED ON THE GROUND OF FUTILITY. SEE: NO. <sup>#</sup>10 & 11 ON PAGES 15 & 16 OF THE PETITIONER'S MEMORADUM IN SUPPORT OF PETITIONER'S ANSWER TO RESPONDENTS ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS, DATED: NOVEMBER 11, 2004.

9. It is admitted that the petitioner is within the applicable ONE YEAR STATUTE WHERE THE ONE YEAR STATUTE FOR FILING A FEDERAL HABEAS CORPUS DID NOT BEGIN UNTIL, AUGUST 8, 2003, WHERE THE PETITIONER HAD CHALLENGED HIS SENTENCE AT THE POST CONVICTION RELIEF HEARING AND THEN FILED THE WRIT FOR HABEAS CORPUS ON, AUGUST 3, 04, WHICH



WAS CLEARLY WITHIN THE ONE YEAR STATUTE FOR FILING THE HABEAS ACTION. PETITIONER NOW RE-AVERIS AND INCORPORATES THIS CROSS REPLY WITH THE MEMORANDUM IN SUPPORT OF PETITIONER'S ANSWER TO RESPONDENT'S ANSWER TO THE PETITION FOR WRIT OF HABEAS CORPUS FILED ON, NOVEMBER 11, 2004, AS FULLY SET FORTH WITHIN.

WHEREFORE, this petition, it is respectfully submitted, should not be dismissed, the writ should be granted with judgement in favor of the petitioner for the clear abuse of the petitioner's constitutional rights 14<sup>th</sup>, 5<sup>th</sup> AMENDMENTS AND FOR THE UNLAWFUL ACTS COMMITTED BY OFFICIALS AGAINST THE PETITIONER. PETITIONER ALSO REQUEST THIS HONORABLE COURT TO VACATE THE JUDGEMENT AND SENTENCE AND PERMIT THE PETITIONER TO SEEK A 1983 ACTION IN THIS MATTER.

DATE: 10/17/05

RESPECTFULLY SUBMITTED

John E. Felgar

John E. Felgar, Pro SE.

130 SOUTH PICKERING STREET

BROOKVILLE, PA. 15825-1419

Appendix(A)

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY,  
PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :  
 :  
vs. : No. 632 - 2001 Cr.  
 :  
JOHN E. FELGAR, :  
Defendant :  
 :

COPY

POST CONVICTION RELIEF ACT  
HEARING

Pages 1 through 44 Jefferson County Courthouse  
Second Floor, Small Courtroom  
200 Main Street  
Brookville, Pennsylvania 15825

FRIDAY, AUGUST 8, 2003

BEFORE: HONORABLE WILLIAM L. HENRY  
Senior Judge

APPEARANCES:

For the Commonwealth: GREGORY M. BAZYLAK, ESQ.  
Assistant District Attorney  
200 Main Street  
Brookville, Pennsylvania 15825

For the Defendant: JOHN M. INGROS, ESQ.  
Office of the Public Defender  
Room 222, Jefferson Place  
Brookville, Pennsylvania 15825

REPORTER: THERESA L. CRAVENER  
Certified Shorthand Reporter

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THERESA L. CRAVENER  
R.D. #2, Box 300  
New Bethlehem, Pennsylvania 16242  
(814) 275 - 1235

APPENDIX (A)

1 your attorney, your trial court attorney here, did anything  
2 wrong with regards to your plea.

3 A. (No response).

4 Q. Isn't it true, Mr. Felgar, you never listed in there  
5 that your attorney did anything wrong; isn't that right?

6 A. No.

7 Q. Mr. Felgar, what you did list in there is that the  
8 sentence that you received was outside the standard range, and  
9 that's why your counsel was ineffective?

10 A. That there was an amendment to my sentence, that I  
11 never got it. My attorney never gave it to me. And I was  
12 never aware of it.

13 Q. Mr. Felgar --

14 A. They changed my Simple Assault charge. They had  
15 Simple Assault on Terroristic Threats, and Terroristic Threats  
16 for probation and a sentence -- they had Simple Assault for  
17 both the sentence and the probation order. And I was confused  
18 by that, because they made an amendment which changed the  
19 probation order to Terroristic Threats. And it looked to me  
20 that the sentence was vacated, and I was put on probation for  
21 five years.

22 THE COURT: So the essence of this  
23 petition is in regard to the sentence that  
24 you received; is that what you're saying?

25 THE WITNESS: Yeah. The amendment is

APPENDIX (A)

1 over there. If you'd like to look at it.

2 MR. INGROS: If you'd like me to  
3 summarize, Your Honor, what happened, the  
4 Court imposed the incarceration sentence  
5 as Simple Assault and a probation sentence  
6 to Terroristic Threats. Through  
7 transcription errors, both were listed as  
8 Simple Assault to the same count, which  
9 would have made the sentencing illegal.  
10 But Judge Foradora caught it the following  
11 the day and amended it to correct it. He  
12 was confused of that.

13 THE WITNESS: I became aware of this  
14 through a public defender for a revocation  
15 hearing for parole. I had no idea this  
16 was even done. And when it came to my  
17 attention, I said, whoa, what is this? I  
18 was confused. So that's when I did this.  
19 I thought it was all screwed up.

20 THE COURT: Okay. I understand.

21 BY MR. BAZYLAK:

22 Q. Mr. Felgar, that's the only allegation of  
23 ineffectiveness that you listed?

24 A. Pardon me.

25 Q. That's the only thing that you claim your attorney

APPENDIX (A)

22

1 was ineffective for doing, was your sentence?

2 A. Oh, it is? What's this big thing back here.

3 Q. No, sir. Read your motion, first two pages.

4 A. What's this? One, two, three, four, five, six,  
5 seven pages long about ineffective counsel?

6 Q. Mr. Felgar, your allegations -- Mr. Felgar, all  
7 right. Paragraph 5 --

8 A. That was a mistake.

9 Q. Paragraph 5 of your petition, Mr. Felgar, what you  
10 allege is what against your attorney? Because that's all you  
11 allege.

12 A. Which one?

13 Q. Go ahead. Take a look. Tell me what you allege.

14 A. It must have been a mistake, or I must have been  
15 still confused.

16 Q. Isn't it true, Mr. Felgar --

17 THE COURT: Well, it doesn't matter  
18 anyway. The guy has a PCRA pending.

19 THE WITNESS: That's mute. Whoever  
20 said that in the PCRA, right, that it had  
21 no. --

22 MR. BAZYLAK: Nothing further.  
23 That's it.

24 THE COURT: Anything else?

25 MR. BAZYLAK: No.

APPENDIX (A)

1 THE COURT: Any redirect?

2 MR. INGROS: Just one.

3 REDIRECT EXAMINATION

4 BY MR. INGROS:

5 Q. Whenever I read this Habeas Corpus that you  
6 prepared, would I be correct in saying that at least in the  
7 denial of effective assistance, the two paragraphs you have  
8 listed there, those are snippets from a case or two that you  
9 would have read? They appear to be portions.

10 A. Yeah. I had another inmate help me.

11 Q. Was this document meant to be an all-in-one,  
12 all-encompassed with all of your other hearings in this case?

13 A. Yeah. I suppose.

14 THE COURT: Let me ask a true or  
15 false question.

16 THE WITNESS: That's what I was  
17 trying to show the Court on the big thing,  
18 the effectiveness of counsel.

19 THE COURT: True or false, the  
20 petition I'm entertaining today is a  
21 petition for Post Conviction Relief,  
22 period?

23 MR. INGROS: Yes.

24 THE COURT: Got it. Okay. I  
25 understand what I'm supposed to entertain.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PROOF OF SERVICE

I CERTIFY UNDER PENALTY OF PERJURY THAT  
THE FOREGOING IS TRUE AND CORRECT. 28 U.S.C.  
SEC. 1746.

OFFICE OF ATTORNEY GENERAL  
COMMONWEALTH OF PENNA. (1) copy  
564 FORBES AVE.  
MANOR COMPLEX, 6<sup>TH</sup> FLOOR  
PITTSBURGH, PA. 15219

CLERKS OFFICE  
U.S. DISTRICT COURT (1) copy & (1) original  
P.O. BOX 1820  
ERIE, PA. 16507

EXECUTED ON: 10/17/05

John E. Felgar.  
John E. Felgar, PRO SE